

Chad  
Schulze/R10/USEPA/US  
01/30/2012 04:18 PM

To CRAIG M PATTERSON  
cc David Powers, downey.scott  
bcc  
Subject Re: Regarding chemical trespass in Traingle Lake, Oregon

Good afternoon Craig,

As you know, David Powers, our Regional Manager for Forests and Rangelands in Portland, Oregon, forwarded your question about federal pesticide application records to Scott Downey and me for a response. Scott is the Manager for the Pesticide and Toxics Unit in Seattle, Washington and I act as the Pesticide Enforcement Team Lead. Specifically, you asked, "Do you keep records internally or do you allow those you are regulating to keep their own records and count on them to provide when necessary?"

EPA does NOT require applicators to submit pesticide application records to the Agency.

In fact, there are only a few areas in the country where EPA has jurisdiction over pesticide application records (e.g., states that don't have an EPA-approved pesticide Certification and Training program). In Oregon, pesticide application records are governed by the United States Department of Agriculture (USDA) and the Oregon Department of Agriculture (ODA). USDA laws require all private applicators, those applying pesticides for purposes of producing an agricultural commodity on property owned or rented by them or their employer, to keep and maintain records of only the more toxic products classified as Restricted Use Pesticides (RUP's). These records must be kept for 2 years and be available to an inspector upon request but are not required to be submitted to USDA. ODA laws require all commercial applicators, those applying pesticides on property owned or operated by another person, to keep and maintain records of any pesticide application, regardless of use classification. Again, there are no requirements to submit the records to any agency.

Where they apply, EPA's pesticide application rules outlined in the federal pesticide law called FIFRA (the Federal Insecticide, Fungicide, and Rodenticide Act), require only commercial applicators keep and maintain application records of RUP's. All other products, classified as General Use, which are more commonly used in the forest industry, do not fall under EPA's application record requirements. Here too, applicators are not required to submit these RUP application records to the Agency.

That said, USDA, ODA, and EPA have provision in their laws which require applicators to keep and maintain the specific application records described above. Failure to keep and maintain the records could subject the applicator to enforcement actions, including penalties.

For more information on USDA's pesticide record keeping requirements please visit their website at, <http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateQ&navID=PesticideRecordkeepingProgram&rightNav1=PesticideRecordkeepingProgram&topNav=&leftNav=ScienceandLaboratories&page=PesticideRecordkeepingProgram&resultType=>

For more information on Oregon's pesticide record keeping requirements please visit their website at, <http://www.oregon.gov/ODA/PEST/recordkeeping.shtml>

For more information on EPA's pesticide record keeping requirements please visit, [http://edocket.access.gpo.gov/cfr\\_2010/julqtr/pdf/40cfr171.11.pdf](http://edocket.access.gpo.gov/cfr_2010/julqtr/pdf/40cfr171.11.pdf)

If you have any questions, please do not hesitate to call me.

Sincerely,

Chad

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David Powers	Craig - Scott Downey and Chad Schulze are EP...	01/18/2012 11:28:33 AM
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From: David Powers/R10/USEPA/US  
To: CRAIG M PATTERSON (b) (6)  
Date: 01/18/2012 11:28 AM  
Subject: Re: Regarding chemical trespass in Traingle Lake, Oregon

Craig - Scott Downey and Chad Schulze are EPA leads for herbicide/pesticide use so I forwarded your questions on records to them. I also sent your questions to Kevin Masterson who deals with chemical issues for OR DEQ.

I think there was a chemical use reporting bill being considered by the OR Legislature a few years ago that established (or would have established) specific chemical use reporting requirements and record keeping/database requirements. I seem to remember something about State funding issues derailing that effort.

I understand your concerns about record keeping and distribution. While some companies have raised proprietary chemical formulation issues in the past I would think that general information on what chemicals were applied, the method and volume of chemical application, and when and where were the chemicals applied would be available to the public. The people I forwarded your e-mail to would be more knowledgeable about chemical record keeping and release. Dave

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CRAIG M PATTERSON	Good Morning David Power, I want to ask...	01/13/2012 06:24:32 AM
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From: CRAIG M PATTERSON (b) (6)  
To: David Powers/R10/USEPA/US@EPA  
Date: 01/13/2012 06:24 AM  
Subject: Regarding chemical trespass in Traingle Lake, Oregon

Good Morning David Power,

I want to ask you a question regarding keeping records in the EPA. Do you keep records internally or do you allow those you are regulating to keep their own records and count on them to provide when necessary? I just received a response from ODF that states, they don't keep records of those who apply chemicals, they count on the operator to keep those records? Talk about having the foxes guard the chickens and keep the records to boot. The whole agency of ODF is incompetent and needs to be shown the door. This is just too much. Here is the letter I received from ODF regarding my questions of the chemical trespass in Triangle lake. What insight can you share regarding this level of malfeasance from the perspective of a regulatory agency? Your perspective and thoughts will be greatly appreciated.

Many regards.

Craig Patterson

Thanks for your message regarding the ongoing Pesticide Analytical and Response Center (PARC) exposure investigation in the Hwy. 36/Triangle Lake area, and the general availability of Notification of Operation data and pesticide spray records.

The PARC agencies working together on the investigation include the Oregon Departments of Forestry (ODF), Agriculture (ODA) and Environmental Quality (DEQ), the Oregon Health Authority (OHA), Oregon Health & Science University (OHSU), Oregon State University (OSU), as well as the U.S. Environmental Protection Agency (EPA) and the U.S. Agency for Toxic Substances and Disease Registry (ATSDR).

As part of the investigation, PARC has asked ODF to obtain spray application records for eight townships (a township is generally about 36 square miles) in the Hwy. 36/Triangle Lake area for 2009, 2010, and 2011. This is an extensive amount of information, and ODF is working diligently to obtain it for the investigation. We expect to complete this information request in February.

Your inquiry also addresses an interest in having all pesticide spray notifications and spray records available on a public-access website. ODF also has an interest in implementing some form of web-based access to our Notification of Operation database to improve efficiency and effectiveness. We have made some gains toward that goal, including securing statutory changes that allow for this approach part of our subscription system.

At this point in time, we are in the planning and evaluation phase, and cannot provide a date for implementation of a web-based data access system, given current resources. A web-based system would only provide the information currently included on the notification, and would not address public access to application records, which are held by applicators and/or landowners.

ODF requests the application records only as needed for a specific investigation involving forest practices, pesticide label provisions, or assisting a PARC inquiry. Application records are not received or held by ODF or another public body; they remain in the possession of the applicator and/or landowner, where the records are not subject to Oregon public disclosure laws.

The Oregon Health Authority is the lead agency in the current exposure investigation, and any further questions you may have should be addressed directly to Karen Bishop at OHA. She can be reached at (971) 673-1219.

Sincerely,

Kevin Weeks